

Attorneys for THE NATURAL  
RESOURCES DEFENSE COUNCIL, INC.

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Petition for Review – Page 1

1 CAS0108758 ("Permit"). The Regional Board issued the final written order in this matter on  
2 January 24, 2007.

3 The Permit regulates storm water discharges from municipal separate storm sewer systems  
4 (MS4s) and other designated storm water discharges within a defined portion of San Diego  
5 County. The County of San Diego is the principal permittee and the incorporated cities as well as  
6 the San Diego Unified Port District and the San Diego County Regional Airport Authority are co-  
7 permittees. The permit covers approximately 2,820 square miles in 10 watersheds, including  
8 unincorporated areas and 18 cities.

9 In July 1990, the Regional Board adopted Order No. 90-42, which granted an NPDES  
10 municipal storm water permit for urban runoff discharges to the County of San Diego County and  
11 the co-permittees. The Regional Board renewed the permit in 2001 by adopting Order No. 2001-  
12 01 NPDES No. CAS0108758. That permit expired on February 21, 2006.

13  
14 1. NAME, ADDRESS, TELEPHONE NUMBER, AND E-MAIL ADDRESS OF THE  
15 PETITIONERS:

16 Natural Resources Defense Council, Inc.  
17 1314 Second Street  
18 Santa Monica, California 90401  
19 Attention: Dorothee A. Alsentzer, Esq. (dalsentzer@nrdc.org)  
20 David S. Beckman, Esq. (dbeckman@nrdc.org)  
21 Michelle Mehta, Esq. (mmehta@nrdc.org)

22 (310) 434-2300

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24 2. THE SPECIFIC ACTION OR INACTION OF THE REGIONAL BOARD WHICH THE  
25 STATE BOARD IS REQUESTED TO REVIEW AND A COPY OF ANY ORDER OR  
26 RESOLUTION OF THE REGIONAL BOARD WHICH IS REFERRED TO IN THE  
27 PETITION:

28 NRDC ("Petitioner") seeks review of the Regional Board's January 24, 2007 approval of  
the Waste Discharge Requirements for the Discharge of Urban Runoff from the Municipal  
Separate Storm Sewer Systems (MS4s) Draining the Watersheds of the County of San Diego, the  
Incorporated Cities of San Diego County, the San Diego Unified Port District, and the San Diego

1 County Regional Airport Authority, Order No. R9-2007-0001, NPDES No. CAS0108758. A copy  
2 of the Order is attached as Exhibit A.

3  
4 3. THE DATE ON WHICH THE REGIONAL BOARD ACTED OR REFUSED TO ACT  
5 OR ON WHICH THE REGIONAL BOARD WAS REQUESTED TO ACT:

6 January 24, 2007.

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8 4. A FULL AND COMPLETE STATEMENT OF THE REASONS THE ACTION OR  
9 FAILURE TO ACT WAS INAPPROPRIATE OR IMPROPER:

10 In approving the Permit, the Regional Board failed to act in accordance with relevant  
11 governing law, acted arbitrarily and capriciously, without substantial evidence, and without  
12 adequate findings. Specifically, but without limitation, the Regional Board:

- 13 A. Failed to assure that the Permit (and associated programs and activities  
14 described in the administrative record) presently satisfies the Clean Water  
15 Act's mandate to require "controls to reduce the discharge of pollutants to  
16 the maximum extent practicable."
- 17 B. Failed to adequately respond to factually and legally specific comments  
18 from public interest organizations and a leading technical expert concerning  
19 significant matters at issue, such as the Permit's compliance with the  
20 maximum extent practicable standard, efficacy and practicability of low  
21 impact development, and other related matters.
- 22 C. Improperly delegated authority to the co-permittees and the Regional Board  
23 Executive Officer in directing them to develop critical elements of the  
24 SUSMP program for new and redevelopment, including low impact  
25 development standards, after the Permit is approved and adopted.
- 26 D. Failed to follow applicable requirements that provide for meaningful public  
27 input and review of the substance of proposed permitting actions.  
28

1 E. Failed to require incorporation and implementation of low impact  
2 development standards in the co-permittees' local SUSMPs until two and a  
3 half years after adoption of the Permit.

4 F. Acted in approving the Permit in these respects without adequate findings  
5 and without substantial evidence in the record supporting both findings and  
6 the adoption of the Permit generally.

7  
8 5. THE MANNER IN WHICH THE PETITIONERS ARE AGGRIEVED:  
9

10 Petitioner NRDC is a non-profit, environmental organization that has a direct interest in  
11 protecting, *inter alia*, the quality of San Diego County's inland and coastal waters. NRDC  
12 represents approximately 100,000 members in California, approximately 8,000 of whom reside in  
13 the San Diego Region. NRDC's members are aggrieved by the Permit's inadequacy to control  
14 polluted urban runoff or support the beneficial uses of the receiving waters in accordance with the  
15 Clean Water Act. In particular, Petitioner's members directly benefit from San Diego County  
16 waters in the form of recreational swimming, surfing, photography, birdwatching, and boating.

17 The Regional Board's failure to adequately control urban storm water runoff through this  
18 Permit has enormous consequences for the region and its residents. Urban storm water runoff is  
19 one of the largest sources of pollution to the coastal and other receiving waters of the nation, and is  
20 a particularly severe problem in this region. Pollutants in storm water pollution adversely impact  
21 aquatic animals and plant life in receiving waters and can cause serious human health impacts.  
22 The San Diego Region's water quality has worsened over the previous two permit cycles, and  
23 monitoring data show that urban runoff is a primary cause of water quality impairment in the  
24 region.

25 Urban development increases impervious land cover and exacerbates problems of storm  
26 water volume, rate, and pollutant loading. Consequently, the San Diego Region's rapid rate of  
27 urbanization and persistent water quality problems demand that the most effective storm water  
28 management tools be required immediately. The Permit, however, lacks clear, enforceable

standards to ensure that new and redevelopment projects in the Region employ best management practices based on low-impact development techniques ("LID")—demonstrated to be the most effective tools to control storm water runoff volume and pollutant loading—to the maximum extent practicable. The Permit suffers the further inadequacy of not requiring immediate implementation of the LID requirements it does include.

All of these documented facts demonstrate the considerable negative impact on Petitioners' members and the environment that continues today as a result of the Regional Board's inability to control storm water pollution through the Permit.

6. THE SPECIFIC ACTION BY THE STATE OR REGIONAL BOARD WHICH PETITIONER REQUESTS:

Petitioners seek an Order by the State Board that:

Overturns the Regional Board's approval of the Waste Discharge Requirements for the Discharge of Urban Runoff from the Municipal Separate Storm Sewer Systems (MS4s) Draining the Watersheds of the County of San Diego, the Incorporated Cities of San Diego County, the San Diego Unified Port District, and the San Diego County Regional Airport Authority, Order No. R9-2007-0001, NPDES No. CAS0108758;

Remands the matter to the Regional Board with specific direction to the Board to remedy each of its violations of law as further described herein.

7. A STATEMENT IN SUPPORT OF LEGAL ISSUES RAISED IN THE PETITION:

See Section 4, above. Petitioners request that this Petition be held in abeyance, and reserve the right to supplement the legal arguments and authorities in support of this Petition.

8. A STATEMENT THAT THE PETITION HAS BEEN SENT TO THE APPROPRIATE REGIONAL BOARD AND TO THE DISCHARGERS, IF NOT THE PETITIONER:

A true and correct copy of this petition was mailed via First Class mail on February 22, 2007 to the Regional Board and the co-permittees.

1 9. A STATEMENT THAT THE SUBSTANTIVE ISSUES OR OBJECTIONS RAISED IN  
2 THE PETITION WERE RAISED BEFORE THE REGIONAL BOARD, OR AN  
3 EXPLANATION OF WHY THE PETITIONER WAS NOT REQUIRED OR WAS  
4 UNABLE TO RAISE THESE SUBSTANTIVE ISSUES OR OBJECTIONS BEFORE  
5 THE REGIONAL BOARD.

6 All of the substantive issues and objections raised herein were presented to the Regional  
7 Board during the period for public comment on the draft Permit. Petitioner submitted written  
8 comments on June 20, 2006, October 23, 2006, December 11, 2006, and January 2, 2007.  
9 Petitioner presented testimony before the Regional Board during public hearings on June 21, 2006,  
10 and January 24, 2007.

11 Respectfully submitted via electronic and U.S. Mail,

12  
13 Dated: February 22, 2007

NATURAL RESOURCES DEFENSE  
COUNCIL, INC.

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16 Dorothée A. Alsentzer  
17 David S. Beckman

18  
19 Counsel for the Natural Resources Defense Council,  
20 Inc.